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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,833	10/30/2003	Cristiana Soldani	88265-7287	7187

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EXAMINER

PEARSE, ADEPEJU OMOLOLA

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-4, 6, and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Fritzsching, The Manufacturing Confectioner. With regard to claim 1, Fritzsching discloses a method of manufacturing hard candies comprising isomalt and an additive including acids. The starting material comprises water, isomalt and additives, evaporation is carried out at a temperature from 135°C to 140°C when cooking under vacuum (see figure 7) and cooling the product to obtain a hard candy with a water content of below 2%. It is inherent that the finished product would have improved transparency because it is processed under similar conditions, using similar ingredients (Pages 70-71).
4. With regard to claim 3, Fritzsching discloses cooking under vacuum (page 70, see fig. 7).
5. With regard to claim 4, Fritzsching discloses cooking under vacuum in order to achieve a water content below 2% (see fig. 7 and page 70 (*cooking*)).

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6. With regard to claim 6, Fritzsching discloses preparing isomalt candies using a precooked syrup at a temperature of 115°C to 120°C and then cooking under vacuum in an evaporator at a temperature from 135°C to 140°C (page 70 (*cooking*), see fig. 7).

7. With regard to claims 8-9, Fritzsching discloses isomalt as a sugar alcohol.

8. With regard to claim 10, Fritzsching discloses citric acid as a suitable acid additive (page 71).

Claim Rejections - 35 USC § 103

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 5 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fritzsching in view of Coia et al (US Pat. No. 4,971,798).

11. With regard to claim 5, Fritzsching failed to disclose evaporating in multiple stages. It would be obvious to one of ordinary skill in the art to expect that the evaporation of water is an experimental result variable based on the amount of water loss required and could be done in one stage or multiple stages.

12. With regard to claims 11-12, Fritzsching failed to disclose the percentage of acid in the hard candy. However, Coia et al teach a hard confection comprising hydrogenated isomaltulose (isomalt) and acids such as malic, citric, fumaric, etc (col 3 lines 3-7) at a range from 0.1-5%, which encompasses applicant's recited range (col 3 lines 10-15) for the purpose of providing tartness. Coia et al teach a processing temperature from 300°F to 330°F (148°C to 165°C) (col 2 line 9) and applicant recites a temperature not to exceed 145°C. Generally, differences in temperature will not support the patentability of subject matter encompassed by the prior art

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unless there is evidence indicating such temperature is critical. "Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Applicant has not provided evidence of the criticality of the claimed temperature.

Therefore, it would be obvious to one of ordinary skill in the art to modify the product of Fritzsching with the teaching of Coia et al by incorporating acids at the specified range for the purpose of providing tartness.

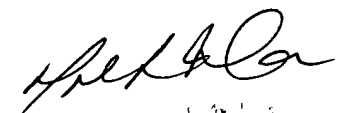
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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